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PROCEEDINGS

OF THE

MASSACHUSETTS HISTORICAL SOCIETY.

JANUARY MEETING, 1866.

A STATED monthly meeting of the Society was held this day, Thursday, Jan. 11, at eleven o'clock; the President, the Hon. ROBERT C. WINTHROP, in the chair.

The Librarian announced donations from the American Philosophical Society; the Boston Society of Natural History; the Massachusetts Institute of Technology; the Library of Congress; the New-England Historic-Genealogical Society; the New-England Loyal Publication Society; the New-Hampshire Historical Society; the Publishers of the "Right Way"; Mr. F. W. Ballard; Edward Breck, Esq.; Henry B. Dawson, Esq.; Mr. John W. Dean; Evert A. Duyckinck, Esq.; Mr. S. D. Hosmer; Benj. P. Johnson, Esq.; Mr. James S. Loring; Rev. Elias Nason; Captain Charlemagne Tower; Wm. W. Wheildon, Esq.; Hon. William Willis; Mrs. Joseph E. Worcester; and from Messrs. Bartlet, Green, Law-

rence, Metcalf, C. Robbins, E. H. Sears, and Winthrop, of the Society.

The Corresponding Secretary read a letter of acceptance from Evert A. Duyckinck, Esq., of New York, who had been elected a Corresponding Member. Mr. Duyckinck, in the same communication, stated that he had sent to the Society a copy of the new edition of his "Cyclopædia of American Literature."

Whereupon it was *Voted*, That the thanks of the Society be presented to Mr. Duyckinck for this gift.

The President read a letter from Stephen H. Bullard, Esq., the Executor under the will of the late Miss Elizabeth Belknap, stating that, at the request of her niece, Mrs. Jane Marcou, he had sent as a gift to the Society a portrait of her grandfather, the late Dr. Jeremy Belknap.

Mr. FOLSOM inquired if the portrait was supposed to have been painted during the lifetime of Dr. Belknap; and called attention to the fact, that among the volumes introduced by the painter into the picture was the second volume of the "American Biography," which was not published until after Dr. Belknap's death. The name of the artist was also on the back of another book, thus, "Painted by H. Sargent, 1798."

Dr. ELLIS said he well remembered the portrait, having often seen it hanging in one of the apartments in the house of the late John Belknap. He had always understood that the picture was in process of painting when Dr. Belknap died.

Mr. SIBLEY suggested that some light might be thrown upon the question as to the time when this portrait was painted, or whether it was an original picture, by ascer-

taining whence came the portrait of Dr. Belknap, now hanging in the Librarian's room, which strongly resembles this.

Mr. SAVAGE said he well recollected the appearance of Dr. Belknap, and regarded this portrait as an excellent likeness.

Mr. FOLSOM expressed the hope that the Society might revive its intention of publishing, from Dr. Belknap's manuscripts in the possession of the Society, a memorial volume of him; and he took occasion to speak of Dr. Belknap as one of the best writers our country had produced.

Dr. ELLIS hoped the Society would print a volume of Proceedings, prepared from its earliest records, embodying in it such historical memorials from the recollection of the older surviving members as can be collected, which together would serve to secure to us the early history of the Society.

In view of the preparation of such a volume, which for some time had been under contemplation, Dr. Ellis, on the motion of Dr. ROBBINS, was added to the Committee on the publication of the Proceedings, with special reference to this subject.

The thanks of the Society were voted to Mrs. Marcou, for the valuable present of the portrait of her grandfather, Dr. Belknap.

The President spoke of the death of three of the Corresponding Members of the Society as follows:—

Colonel James D. Graham, of the United-States Corps of Engineers, died suddenly in this city, on the 28th of December last. He had been one of our Corresponding Members for

twenty years, and during the last eighteen months had attended several of our meetings. He was a native of Virginia, but had remained loyal to the Union during the late rebellion; and, though too infirm to take the field, had rendered valuable services to the country in connection with the harbor improvements of the Atlantic coast. For the last year and a half, he had been in charge of the work for the preservation of Boston Harbor, and in that relation had won the special confidence and respect of our city authorities. His services to the country, in running out the North-eastern boundary under the Ashburton and Webster Treaty, were of the highest value. Stationed for many years on the Lakes, he took a leading part in the transactions of the Chicago Historical Society; and his acquirements and accomplishments had given him an enviable position among scientific men in all parts of the land.

In San Francisco, on the 18th of December, died the Hon. Matthew Hall McAllister, who had also been for many years on the roll of our Corresponding Members. He was a native of Georgia, and in 1827 was selected by President John Quincy Adams as the District Attorney of the United States for the State of Georgia, at a moment when the controversy between that State and the general Government, in regard to the Indian Lands, required a man of peculiar fearlessness and firmness. Mr. McAllister was true to the Union then, as he was afterwards in the days of South Carolina Nullification. In 1855 he was sent to California as the judge of the United-States Circuit Court; and he devoted himself, with untiring industry, to the arduous duties of this office. The failure of his health prevented his taking any part in the more recent affairs of the country, and he had been compelled to retire from all public service several years before his decease.

The death of still another of our Corresponding Members has been brought to my knowledge within a few days past. Mr. Israel K. Tefft, of Savannah, Georgia, died a few years

since, while our relations to the Southern States were too much disturbed to allow of our hearing what was occurring within their borders from day to day. Mr. Tefft was well known as the owner of a very large and interesting collection of historical autograph letters, which he had procured at great cost, and arranged with great care, and which has probably few equals in our country.*

In connection with the notice of the death of Mr. Tefft, the President read a letter from Mr. M. P. Kennard, of this city, stating that Mrs. Tefft was desirous of disposing of the large and valuable collection of autographs left by her husband, either to the Massachusetts Historical Society or to the Boston Athenæum; that the collection numbers upwards of thirty-five thousand; that Mrs. Tefft nominally valued them at from \$15,000 to \$20,000; that she was now, in her old age, left well-nigh penniless, from the effects of the war.

The President stated that he understood that the collection, if bought entire, could be purchased for \$10,000.

Mr. DEANE exhibited an early map of the harbor of Boston, in a mutilated condition. The date is wanting, but he thought it the original from which subsequent maps of the harbor had been made for a number of years. It was called "A New Suruey of the Harbour of Boston in New England. — Done by order of the Prin-

* At a meeting of the Georgia Historical Society, held July 14th, 1862, resolutions of respect to the memory of I. K. Tefft, Esq., its first and only Corresponding Secretary, and one of its earliest and most devoted friends and patrons, were presented and passed. It is stated that he died on the 30th of June, 1862. He was born in the town of Smithfield, Rhode Island, on the 12th of February, 1794. He lost his father at the age of four years. He received his academic education in Boston. In 1816 he went to Savannah; and in 1821 became editor and proprietor of the "Savannah Georgian" newspaper, jointly with Henry James Finn. He was elected Cashier of the Bank of the State of Georgia in 1848, and filled that position to the time of his decease. — EDS.

cipall Officers and Comissioners of His Ma^{ties} Navy, and sold by George Grierson at the two bibles in Essex Street, Dublin." Mr. Deane conjectured its date to be somewhere from 1730 to 1740. He remarked that the earliest well-defined map of Boston Harbor, with the islands delineated, which had come under his observation, was the one in a corner of the map of New England, in Neal's "History of New England," published in 1720.

Dr. ROBBINS exhibited, and presented to the Society, a broadside proclamation of President Washington, dated January 1st, 1795, appointing Thursday, February 19th, as a day of public thanksgiving and prayer, "for the manifold and signal mercies which distinguish our lot as a nation," in "the suppression of the late insurrection," &c.

Mrs. Worcester, of Cambridge, presented to the Society, through Mr. Folsom, a number of volumes of the Journal and Proceedings of the Royal Geographical Society of London, to complete the series to the present time; the former volumes having been given last year by her husband, our late esteemed member, Dr. Worcester.

Mr. FOLSOM also called the attention of members to the large number of volumes upon the table, relating to the history of the late Rebellion, which had been selected for the Society by Dr. Green, and presented by our associate, Mr. Lawrence.

The thanks of the Society were voted to Mr. Lawrence, for this valuable addition to the Library of the Society; and to Dr. Green, for his agency in procuring the books.

The thanks of the Society were also presented to Mrs. Worcester for the volumes presented by her.

The President communicated a number of Confederate bonds, which had been sent to him for the Society by Major-General Benham, of the United-States Army.

The President read a paper, which had been handed to him by Mr. Deane, purporting to be a list of the authors of the lives in Sanderson's "Biography of the Signers of the Declaration of Independence." The list appears to have been published in the "Daily Cincinnati Gazette," of August 11th, 1827, which paper credits it to the "New-York Times."

The President read the following letters from the Hon. Rufus King, then a member of the Congress of the Confederation, from Massachusetts, — one addressed to "His Excellency Gov^r. Bowdoin," and one to Elbridge Gerry, Mr. King's colleague in the same Congress : —

Rufus King to Governor Bowdoin.

NEW YORK, May 18, 1786.

SIR, — The revival of the Newfoundland bill in the late session of Parliament, and the renewal of the Act vesting in the King in Council the regulation of the intercourse between the United States and his dominions, is satisfactory evidence to every impartial man, that Great Britain will not enter into a commercial treaty with this country; and that, if the accomplishment of that measure is the only object of the residence of a Minister at London, Mr. Adams may be recalled without farther delay or disappointment.

These Acts are for one year; and if, during that term, the States of America continue as destitute of an union of measures as they have remained since the peace, they will probably be made perpetual. Unless the fear of a rival in America induces the British Government to relax their Navigation Acts, no other motive will; for in fact the effect of every project of a commercial treaty must be an alteration of the laws of navigation.

The present Ministry are unquestionably against a treaty: indeed, were they well disposed to treat, they would not dare do it without the approbation of Parliament. *There* the measure would find few or no advocates; the nation is wedded to their ancient regulations; and the prejudices of the kingdom are so much in favor of the navigation laws, that he must be a bold Minister who should propose an alteration.

It is said, however, and from probable authority, that the nation would have relaxed their laws in favor of the United Netherlands, could they thereby have prevented the defensive alliance between them and the King of France. But the party of the Prince of Orange, together with a corrupt attempt of the English Minister, failed; and the alliance was concluded in November last.

It was thought that this alliance would have disposed the British Ministry to measures of friendship with our country; and that, apprehensive that the United States might become a party in this combination, they would not readily deny or refuse to evacuate the ports now possessed in America, in contravention of the treaty. In pursuance of this idea, and under instructions for that purpose, Mr. Adams made a demand for an evacuation and surrender; and, in February, Lord Carmarthen delivered to Mr. Adams the answer of the King, which declares His Majesty's firm determination to abide by, and carry into full and complete effect, every part of the definitive treaty of peace between His Majesty and the United States; but remarks, that it cannot be expected that His Majesty will carry the same into effect, unless he discovers a disposition in the United States in like manner to abide by and execute the same; that the fourth article of the treaty stipulates that no legal impediments shall be opposed to the recovery of the *bonâ fide* debts of British creditors, but that laws exist in many of the American States which are interpreted by their respective judicatories legal impediments to such recovery; that so long as these impediments remain, in violation of the treaty on the part of the United States, they have no right to require a full compliance therewith on the part of His Majesty; but that His Majesty will unequivocally execute the same as soon as he has ascertained that a similar disposition prevails in the United States.

An abstract of the laws of the several States which are said to be in violation of the treaty, was delivered by Lord Carmarthen to Mr. Adams, and by this Minister transmitted to Congress. No acts of any of the four New-England States are complained of, except the act of Massachusetts, passed in 1784, relative to interest. This, however, is

not truly stated; and, as it exists, cannot be construed in contravention of the treaty.

It is a pleasing reflection, that nothing is charged against any of the States on the subject of the refugees. This silence tends to evince the truth of the construction which has been contended for by many persons in America, that the clauses in the treaty relative to a restitution of their property and their residence within the States are merely recommendatory, and not absolute.

The foregoing communications are considered as of the first political importance. I have written in much haste; but, judging the information necessary, I have thought it my duty to transmit it to you as first magistrate of our Commonwealth. *My remarks* are totally unnecessary. One truth is most obvious, "that the happiness, prosperity, and safety of our country must depend upon the united systems and exertions of the several States, and not on the separate arrangements of individual States, or the kindness, favor, or friendship of foreign nations."

Mr. Gorham informs me that he shall write to you in answer to your last. I will do myself the honor to inform your excellency by the next post of the condition of the negotiation for procuring peace from the States of Barbary.

With perfect respect, I have the honor to be your Excellency's obedient and very humble servant,

RUFUS KING.

His Excellency Governor BOWDOIN.

Rufus King to Elbridge Gerry.

NEW YORK, June 4, 1786.

MY DEAR FRIEND, — I have long entertained doubts concerning the line of conduct which Congress ought to pursue relative to the territory of the United States north-west of the Ohio; and am every day more confirmed in the opinion, that no paper engagements or stipulations can be formed which will insure a durable connection between the Atlantic States and those which will be erected to the westward of the Appalachian or Alleghany Mountains, provided the Mississippi is immediately opened. The pursuits and interests of the people on the two sides will be so different, and probably so opposite, that an entire separation must eventually ensue. This consequence appears to me so obvious, that I very much doubt whether the United States would ever receive a penny of revenue from the inhabitants who may settle the Western territory.

Should there be an uninterrupted use of the Mississippi at this time by the citizens of the United States, I should consider every emigrant to that country from the Atlantic States as for ever lost to the confederacy. Perhaps I am in an error; but, when men have no interest in an union inconvenient to them in many points, I can discover no principle which will attach them to such a connection. I know not what advantages the inhabitants of the Western territory would acquire by becoming members of our confederacy. They would want no protection; their local situation would sufficiently secure them from all foreign hostility; their exchange of merchandise or commerce would not be across the Appalachian Mountains, but wholly confined to the Mississippi.

If these conjectures are just, in true policy, ought the United States to be very assiduous to encourage their citizens to become settlers of the country beyond the Appalachian? The object of Congress appears hitherto to have been a sale of this country for the sinking of the domestic debt: the immediate extinguishment of this debt is certainly a very important consideration, but it has its price.

Suppose that a treaty could be formed between Spain and the United States upon principles of exact reciprocity, so that the citizens of the latter might introduce into the European and African dominions of the former all sorts of goods and merchandise, upon the same terms on which the subjects of Spain could introduce the same articles; and, on the other hand, that the subjects of Spain might import into any of the United States all sorts of goods and merchandise, upon the same terms as the citizens of the United States could introduce the same. Suppose farther, that the treaty should stipulate that all the masts, spars, timber, &c., &c., wanted for the national marine of Spain, should be purchased and paid for in the United States with specie, provided the quality of the materials equalled that of the same articles in other countries.

Suppose yet farther, that the Philippine Islands should be opened to the American ships and commerce, and of consequence the gold and silver of Acapulco put within their reach.

Add to the foregoing, an article in the treaty, not to relinquish the right to the free navigation of the Mississippi, *but "stipulating that the United States should forbear to use the navigation of the Mississippi for twenty or twenty-five years."*

Would not such a treaty be of vast importance to the Atlantic States, particularly to the Eastern division of them? Would not the

fish, flour, and other products of the United States, acquire thereby a manifest superiority in Spain over similar commodities of any other country? Would not the conventional forbearance of the use of the Mississippi implicate most strongly the right of the United States, independent of the convention or treaty? If these queries are answered in the affirmative, what objection is there on the part of the United States to conclude such a treaty?

This question brings into view the plan of extinguishing the domestic debt by the sale of the Western territory, the system whereby it is proposed to govern the people who shall settle westward of the Alleghany Mountains and within the United States, and the ability of the United States at this time to contend with Spain in vindicating their right to the free use and navigation of the Mississippi.

I am very sensible that the popular opinion throughout the United States is in favor of the free navigation of the Mississippi, and that the reasons must be strong and important which can successfully oppose this opinion. I am also fully sensible, that the free navigation of that river will hereafter be of vast importance to the inhabitants within the territories of the United States. Yet admitting, what will not be denied, that Spain will on no condition agree that any people except those of their own nation shall navigate the Mississippi, are the United States in a condition to assert their right? If you answer this question as I should (*believing, as I do*, that a war with Spain, France, or England would terminate in the loss of the fisheries, and the restriction of boundaries, perhaps by Kennebec on one part, and the Appalachian Mountains on the other), is there any substantial objection against an article in a treaty with Spain relative to the Mississippi, such as is alluded to? If it is a consent to what we cannot alter, considering other benefits to be obtained, it must be wisdom thus to consent.

But how will this article affect the sale of the Western territory? The answer which the delegates of Virginia (all of whom probably are deeply interested in the Ohio or Kentucky lands) would give, is, that the value of the country west of the Alleghany Mountains depends in a high degree upon the opening of the Mississippi. *Admit the fact.* It is denied that the United States can, under present circumstances, open that river to their citizens. If so, the value placed upon these lands, which depend upon the opening of the Mississippi, is an ideal value at this time. With men, therefore, who do not wish to involve the United States in a war against policy and sound reason, this objection is of little consideration. The lands perhaps will not produce

so much under the present circumstances of the Mississippi as they would if that river was open ; but, to all persons desirous of becoming settlers, they will sell for a handsome price, and go a good way in extinguishing the domestic debt.

But how will such an article affect the intercourse between the inhabitants of the Western territory and those of the Atlantic States ? In my judgment, very favorably. If the former are cut off for a time from any connections except with the old States across the mountains, I should not despair that a government might be instituted, so connecting them with the Atlantic States as would be highly beneficial to both, and promise a considerable duration.

But, my dear friend, after all, these are but speculative opinions ; and I am even doubtful of them when a variety of influential motives, which seem to promise well for my country, authorize my assent. I alluded to this subject in my last letter to you. I wish for your counsel. I wish the New-England States were here. I pray you to read these remarks with candor, and in confidence inform me of your opinion. If I had taken time and care to have expressed my sentiments on this subject, I would have requested you to have communicated this paper to your friend Governor Bowdoin, and prayed through you his advice.

I shall be brought to a decision on this question. Congress must determine. If Spain don't conclude a treaty with the United States, I think they will endeavor to guard against the evils they fear from us, by an intimate connection with Great Britain.

I am of a committee now in conference with the Secretary of Foreign Affairs on this subject. Spain wishes a treaty with the United States in preference to any other nation ; and there is no nation with whom the United States could form more beneficial treaties than with Spain and Portugal.

Spain will not give up the Mississippi. But I will not add. I write in great haste and in full confidence. If you are at Boston, and can consult Mr. Bowdoin, I should thank you to do it. I intended to have written to him relative to the Barbary treaties, but have not been able to find the time.

Adieu, yours affectionately,

R. KING.

Inform me of the receipt of this, and of my last.

Mr. GERRY.

Samuel Tymms, F.S.A., &c., Honorary Secretary and Treasurer to the Suffolk Institute of Archæology, presented to the Society, through the President, and in the name of the Institute, four numbers of the second volume of the "East Anglian."

Mr. HALE inquired if any of the members present had ever met with a reference to Tobacco, in the writings of Shakespeare. He said that he was about to state in print that no such reference could be found; and he should feel very awkwardly if, the next day after the publication of such a statement, some Shakespeare critic should send him a passage containing the word. Ralph Lane introduced Tobacco into England, from Virginia, about the time that Shakespeare is supposed to have taken up his residence in London. If both Shakespeare and Raleigh were members of "The Mermaid Club," the great dramatist must have seen Raleigh smoking there; and he thought it a curious fact, that while there was unmistakable reference to America in Shakespeare's writings, he could find no allusion to Tobacco.

Mr. Hale's remarks elicited considerable discussion among the members.

Colonel ASPINWALL stated that Virginia tobacco was not an article of commerce in Europe, till about 1614, its production having been discouraged by the Government; and it was therefore not a subject of general notice. He believed it was first known in the market as "Varina."

THE ORIGIN, ORGANIZATION, AND INFLUENCE OF THE TOWNS OF NEW ENGLAND.

BY PROFESSOR JOEL PARKER.

[The following paper was read at the meeting in December last; but, owing to the absence of the writer from the State when the Proceedings of that meeting were passing through the press, the printing of the paper was deferred:—]

It is interesting and instructive to contemplate the progress of the settlement of the different portions of the country; to note the differences which existed between the mode of settlement adopted in New England and in other districts; to inquire how the townships of New England came into existence, and perceive how largely they must have contributed to the success of the settlements; but, above all, to mark their influence, mainly exerted through their subsequent incorporation as towns, upon the social, political, moral, and religious character of the inhabitants. It will increase our veneration for our fathers, it will refresh our own patriotism.

The great principle upon which the settlement of New England had its inception, and which led to the establishment of the colony at Plymouth, was the desire of the Pilgrim Fathers to enjoy unmolested their religious opinions. There were two other principles upon which the settlement was projected, or which were soon after recognized, and which, in their tendency to promote the prosperity of the enterprise,

were secondary only to that of religious liberty: one, that the right of government should be secured to them by charters, conferring upon them powers for that purpose; the other, that the adventurers were severally to possess small freeholds in their own right.*

There were perhaps several reasons why the emigrants, in the first instance, were desirous of acquiring only a moderate portion of the territory. They could take possession of but a small strip of land on the seaboard, the necessity of mutual protection against Indian hostility obliging them to live in communities. They desired to encourage the emigration of all those who, like themselves, were suffering for conscience' sake. They had in view trade, rather than agriculture. And it may be added, that the religious and political principles of many of them alike forbade an attempt at the acquisition of feudal rights or manorial relations.

There were doubtless, also, several reasons why, in their grants and charters, they should have insisted upon the insertion of such articles as would enable them to make laws and ordinances for their own government, and provision for their own welfare. The necessity of a civil government of some kind was apparent. The impossibility that any government, administered by the Mother Country alone, should be adequate to their wants, must have been equally so. And, above all, the determination of the emigrants to be secure in their religious privileges, which security they well knew could not be attained except by the power of making their own regulations, was alone a sufficient reason.

In considering, therefore, the early history of New England, and tracing its prosperity through the hardships and toil and suffering and dangers which were endured by the early settlers, while great credit is due to the religious principle which actuated most of them, and too much praise can

* Morton's Memorial, Davis's ed., 1826. Appendix F, p. 362.

hardly be bestowed upon it, we should not overlook the other agencies to which I have thus referred; to wit, corporate municipal powers, and the subdivision of the land into small freeholds; which, if they grew out of, and were originally but consequences of, the religious sentiment, yet became of themselves powerful means in the promotion of the settlement and prosperity of the country.

Fervent as was the piety, and persistent as was the energy, of many of the early settlers, the religious principle could not have been maintained, impressing its character upon the opinions, manners, and habits of the people, had it not been for these other agencies. Had there been, in the early settlement of the country, colonial governors, appointed by the crown to enforce laws made by the Mother Country only, without a power of self-government, the ranks of the emigrants could not have been filled. And, had the country been granted in large tracts to single proprietors, who thereupon attempted to settle them as leaseholds, by a tenantry paying rents of money, grain, &c., the settlements of New England could have never proceeded with the rapidity and success which have characterized them.

Manors have existed in a portion of the colony of New York. And the grants of land by the owner of the manor ("the Patroon"), reserving an annual rent, have been the source of incalculable evils, morally and politically, in these districts.

But the form of self-government provided for in the charters and patents was not alone sufficient for the purpose. All these elements, to wit, religious liberty, self-government, and freehold titles, have had their full influence and operation more effectually through the organization of towns, than in any other mode. It is through the action of these town incorporations that the Puritan principles have been sustained, the New-England character formed, the industry and economy of the people promoted, the education of the whole

population provided for, and perhaps the independence of the country secured. I am sure that I do not exaggerate their importance, when I say that they have been the arterial system of New England, through which has circulated the life-blood which has invigorated, sustained, and strengthened her; making her expand in her religious, social, educational, benevolent, and political institutions and character.

The subject of the present paper is the origin of these town corporations, the mode of their organization, their utility as manifested by the division of the lands within their limits, the rights and privileges which they possessed and secured, their duties and liabilities, and the influence they have exerted, not only upon the social and religious character of the people embraced within their respective limits, but the vast effect they have had upon the political destinies of New England, and of the whole country.

Before proceeding to show the manner in which these towns originated, it may be well, for the information of any one not conversant with the subject, to say, that in the early history and records of New England, while the term *plantation* was often used to designate the whole colony, whether of Plymouth or Massachusetts, the terms *plantation* and *town* were used indifferently, to represent a settlement of persons in the neighborhood of each other, forming a cluster of habitations, the inhabitants voluntarily associating themselves together for the performance of certain common duties, and the enjoyment of common privileges and social intercourse; although persons living at some distance, and comparatively isolated, might be thus associated with those more compactly settled, and thus belong to the plantation or town. When adjacent lands were afterwards granted to them or others, so that the territory was sufficiently large, the limits of the plantation or town were established, and it was afterwards known as a township, or town. Purchases of territory were sometimes made from the Indians, and allowed by the General

Court, and a charter granted. The *territory* within the limits of these grants and purchases was sometimes known as a *township*; but as the limits of such early towns were rarely, if ever, established until an act of incorporation was granted, which authorized the inhabitants to exercise certain powers of local government, the term *township* is not so often found applied to these earliest settlements, as that of town.

At a somewhat later stage in the history of New England, when the emigration had increased and there was a desire and necessity for the expansion of the settlements, tracts of land, of some miles in extent, were granted by the Government to companies, or to several persons, in anticipation of settlement. These grants were called *townships*; and the grantees or proprietors of the township held meetings, dividing and allotting the lands among themselves, in different modes, by a major vote. The share of each proprietor in the township might be sold by him, and his lands when a division was made. Acting thus far like corporations, the proprietors have been recognized as having corporate powers for such purposes, and the collective body has been known as the *Proprietary*. When the lands were all divided and allotted, the proprietary became extinct,—dissolved by the accomplishment of the purpose for which it existed,—and the term *township* soon ceased to be the common designation. Whenever a sufficient number of inhabitants were settled in such township, to render it expedient that they should perform duties and enjoy privileges similar to those performed and enjoyed by the inhabitants of the earlier towns (which was generally before the proprietary was dissolved), the township was incorporated, and from that time became known as a *town*, by the name specified in the act of incorporation; although the term *township* continued to be used, mainly in reference to the division of the lands, and matters pertaining to land-titles.

The term *plantation* was retained but a short time, and

has fallen into almost entire disuse in New England; but it has been, and still is, used in the southern states, to designate a large tract of land in the ownership of a single person, particularly when cultivated by the labor of slaves.

Early after the institution of the Federal Government, the term *township* was used as descriptive of the territorial divisions of the public lands of the United States in the western states and territories, which have been usually surveyed into tracts six miles square, with subdivisions down to forty acres, and then offered for sale by the Government. As these townships become settled, they are called and known as towns; and sometimes the villages in them have, popularly, the same designation.

It has been said (by Mr. Baylies), that "the origin of town governments in New England is involved in some obscurity. The system does not prevail in England. Nothing analogous to it is known in the southern states; and, although the system of internal government in the middle states bears a partial resemblance to that of New England, it is in many respects dissimilar. Those who are strangers to our customs, are surprised to find the whole of New England divided into a vast number of little democratic republics, which have full power to do all those things which most essentially concern the comfort, happiness, and morals of the people."*

Another writer remarks, that the New-England towns were "peculiar in their independence and the organization of their government," and that "this government, in the light of to-day so simple and reasonable, perhaps existed nowhere else."—"The nearest precedents," he thinks, "for the New-England towns were those little independent nations, the free cities of the twelfth century; or the towns of the Anglo-Saxons, where every office was elective."†

* 1 Baylies' Memoir of Plymouth Colony, 240.

† Frothingham's History of Charlestown, 49, 50.

But a careful examination of the history of the New-England towns will show that they were not founded or modelled on precedent.

I very well recollect the curiosity expressed by some of the gentlemen in the suite of Lafayette, on his visit to this country in 1825, respecting these town organizations and their powers and operations; and a very intelligent foreigner, the author of "Democracy in America," took great pains to acquire information respecting them, and devoted considerable space in his work to an account of their powers, privileges, and duties. With these matters we are all familiar, having almost daily occasion to take part in the exercise of the first two, and to aid in the performance of the latter. But the questions, how it happened that these towns were formed, what were their powers and duties originally, what has been the course of their progress, and what the effect of their organization, are not the subjects of our daily contemplation.

They were not contrived in the closet, nor in the hall of a legislative assembly; and brought into existence, with the powers and duties which we find attached to them, by the enactment of a law for that purpose. They did not burst into mature life by any previous contrivance. But, like most other useful machinery, they had their origin in the wants of the time, and came into existence by a gradual progress from imperfect beginnings.

For the origin of these institutions, the introduction of their municipal powers and duties, and their operation in the distribution of the land into small freeholds, it is necessary to study the history of the early settlement of New England.

The charter of "the Council established at Plymouth, in the County of Devon" [in England], for the planting, ruling, ordering, and governing of New England in America," granted by James I., Nov. 3, 1620, and known as "the Great Patent of New England," incorporated the grantees, and empowered them to make, ordain, and establish all

manner of orders, laws, &c., for and concerning the government of the colony and plantation, which should not be contrary to the laws and statutes of the realm; with power to the Council, and to such governors, officers, &c., as they should appoint, to correct, punish, pardon, govern, &c., according to such laws, orders, &c., "and in defect thereof, in cases of necessity, according to the good discretions of the said governors and officers respectively, as well in cases capital and criminal as civil, both marine and others; so always as the said statutes, ordinances, and proceedings [be], as near as conveniently may be, agreeable to the laws statutes, government, and policy of this our realm of England." The lands embraced in it were to be held "in free and common socage, and not *in capite* nor by knights service;" which was the most free manner of holding lands in England.* This was certainly a most ample grant of powers.

The emigration of the first settlers at Plymouth, in New England, was before this grant (although their arrival was after); and the settlement which they contemplated was to be under the General Company of Virginia, which was established in 1606. For this purpose a patent was procured from the Virginia Company, which is supposed to have embraced a tract of territory near the mouth of the Hudson River. But they never made use of it. Storms drove them from their course; they made land at Cape Cod, and concluded to settle there.†

Before landing, they entered into and subscribed a combination or compact, "being the first foundation of their government," "occasioned partly by the discontented and mutinous speeches that some of the strangers amongst them

* See Plymouth Colony Records; Plymouth Colony Laws, Brigham's ed., 1-10.

† See Hutch. Hist. of Mass., 3d ed., vol. i. App., pp. 407, 409, 411; and, more at large, Bradford's History of Plymouth Plantation, published by the Massachusetts Historical Society, 1856, edited by Charles Deane, Esq., pp. 28, 41, 44, 76, 80, and Editor's notes. Same work in the Collections of the Historical Society, 4th series, vol. iii. For an account of the recent discovery of this work, see Mr. Deane's Editorial Preface.

had let fall from them in the ship,—that when they came ashore they would use their own liberty ; for none had power to command them, the patent they had being for Virginia, and not for New England, which belonged to an other government, with which the Virginia Company had nothing to do. And partly, that such an act by them done (this their condition considered) might be as firm as any patent, and in some respects more sure.” In this compact, after reciting that they were loyal subjects of King James, and that they had undertaken, for the glory of God, the advancement of the Christian faith, and honor of their king and country, to plant the first colony in the northern parts of Virginia, the subscribers solemnly covenanted and combined themselves “together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid ; and by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due submission and obedience.” *

Under this compact they chose Mr. Carver governor ; and, in the early part of the next year, he was re-elected. Doubtless they chose minor officers also. On Carver's death, in April, 1621, Bradford was elected governor ; but, being ill at the time, an assistant was chosen. Subsequently the number of the assistants was increased to five, afterwards to seven, forming a court or council of assistants, the Governor having a double voice.† The authority to elect the officers, and to direct and order the affairs of the colony, was in the freemen ; and meetings for the purpose, called *General Courts*, became annual, first in January, then in March, afterwards in June.‡

* Bradford's Hist., pp. 89, 90.

† Bradford's Hist., pp. 101, 156, 306, Deane's note.

‡ Bradford's Hist., p. 307, Deane's note ; Plymouth Colony Laws, pp. 30, 32, 37, 39. “The title of freeman is given to any one admitted to the freedom of a corporate

Thus a frame of self-government, to be administered by the freemen themselves, and through the agency of those whom they elected for the purpose, was established from the first.

On the first of June, 1621, a charter or patent from the President and Council established at Plymouth, in England, was granted to John Pierce and his associates, in trust for the colony. By this patent it was recited, that "Pierce and his associates had transported, and undertaken to transport," "divers persons into New England, and there to erect and build a town, and settle divers inhabitants, &c.; and thereupon the President and Council agreed to grant and allot, and did grant and allot, to Pierce and his associates, and every of them, one hundred acres of ground for every person, if they should continue three years, or die in the meantime, yielding a yearly rent of two shillings per acre after the first seven years. There were other provisions for grants of lands,—a covenant for a further specific grant of title, by bounds, upon a survey; another, that at any time within seven years, upon request, the President and Council would grant letters and grant of incorporation, by some usual and fit name and title, with liberty to them and their successors to make laws, ordinances, and constitutions, for the rule, government, &c., of all persons to be transported and settled, &c., with a provision, that in the mean time it should be lawful for Pierce and his associates, their heirs and assigns, by consent of the greater part of them, to establish such laws and ordinances as were for their better government; and the same, by such officer or officers as they should by most voices elect and choose, to put in execution. It was further agreed, that, when the lands should be planted, there should be a further

town, or any other corporate body, consisting, among other members, of those called freemen." — *Jacob's Law Dic.* The subscribers to the compact having combined themselves into a civil body politic, acted, in the management of their affairs, like a corporation; and they, with those whom they admitted into their association, were the freemen.

allowance and grant of fifty acres for each person transported and settled in the plantation.*

It does not appear that the grantees ever acted under this patent. And it seems to me not improbable, that the clause providing for the payment of rent was particularly distasteful to them.† There is no evidence that any reliance was placed upon the authority given by the patent, when, ten years after the first settlement, the Court, after indictment and trial by jury, undertook to inflict capital punishment for the offence of murder. As they were then an organized community, within the limits of the Great Patent, and recognized as such, perhaps they relied somewhat upon the provision in that grant, respecting discretion in governing, where no express authority was found. It appears that they consulted Governor Winthrop upon that occasion. They had no scruples respecting their authority, by virtue of their combination, to inflict corporal punishment for lesser offences.‡

Pierce, in 1622, procured another patent, and it seems intended to establish a manorial court, and himself as lord of the manor. It is generally said, that this was assigned to the Plymouth colony. But Dr. Palfrey cites extracts from the Manuscript Journal of the Council for New England, to show "that Pierce's new patent was cancelled, and the Adventurers were reinstated in their rights." §

A patent was granted, by the Plymouth Company in England, to Bradford, his heirs, associates, and assigns, Jan. 13, 1629. And when, in 1636, the colonists revised their laws, they refer to their "solemn and binding combination," and to this patent, as their authority "for the ordering of a body

* See Mass. Hist. Coll. 4th series, vol. ii. p. 158; Bradford's Hist. 107, and Deane's note; Morton's New England's Memorial, p. 20.

† William Hilton, writing from New Plymouth, November, 1621, says, "We are all freeholders; the rent-day doth not trouble us." — *Young's Chronicles of the Pilgrims*, p. 250.

‡ Bradford's Hist. p. 276; Hutch. Hist. Mass., vol. ii. p. 413.

§ Palfrey's Hist. of New England, vol. i. p. 210.

politic within the several limits of the patent." It may be noted, however, that in "a form to be placed before the records of the several inheritances granted to all and every of the king's subjects inhabiting within the government," which was prepared at the same time, they not only refer to the compact, and the patent to Bradford, but allege that they "had sundry commissions made and confirmed by his said Majesty's Council for New England, to John Pierce and his associates (whose name we only made use of, and whose associates we were)." * If perchance it might afterwards be supposed that the "commissions" to Pierce affected the title to the lands, they asserted, it seems, their right to the benefit of them; although they did not rely upon them for authority in ordering the affairs of the body politic.

Bradford surrendered the patent to him, "his heirs, associates, and assigns," "into the hands of the whole court, consisting of the freemen of the corporation of New Plymouth," in 1640, in order that the title should be established in the colony. †

Many of these facts relative to the original establishment of the Colony are familiar to us, partly through the statements of authors who had seen Bradford's manuscript. I have recited them here, because the New-England towns derived their origin, organization, and powers of local government, from the powers exercised by the early emigrants; under the Compact, so far as appears, in the Plymouth colony, and under the charters in the colony of Massachusetts Bay. And they serve to show the principles upon which the emigrants acted, and in part the manner in which they were obliged to proceed in making their settlement. The circumstances in which they were placed, gave in no small degree a direction to the measures which they adopted in the management of their affairs, while always governed by the princi-

* 11 Plymouth Col. Records, pp. 6, 21.

† Bradford's Hist., 372.

ples which led them to forsake their native land, and form a colony in the wilderness.

Baylies says of the emigrants, that, "finding a place where much land had been cleared in the neighborhood of a small but pleasant stream," &c., "and of a high hill which could be fortified in a manner so as to command the surrounding country, they resolved to lay out a *town*."* But Bradford does not use this phraseology at that date. He calls the settlement, in the first instance, a plantation; and it was not until the latter part of 1621, when, describing the measures for defence against the Indians, he says, "This was accomplished very cheerfully, and the towne impayled round by the beginning of March."† In another place he speaks of an "Indian towne;" from which it is apparent that he uses the term merely to express the idea of a compact settlement, and with no reference to any organization.

It was their first duty to maintain religious observances and worship; and the second was that of good order, not only in things spiritual, but temporal also.

For several years these powers of government were exerted upon a single community only.

The original design being to establish a trading settlement, or factory as it is sometimes called, their first arrangement was that of partnership.‡ Every man's person was valued at ten pounds; besides which, those who were able contributed in money and goods, and the profits were to be shared according to the interest of each in the common stock. The lands were also held in common, and assigned in small parcels for cultivation from year to year.

Although nothing appears to have been done under the patent to Pierce, it serves to show that at that time it was in contemplation not only to grant lands in severalty, but it

* 1 Baylies' Memoir, 60.

† Bradford's Hist., pp. 95, 106, 112.

‡ 2 Hutch., 416, 417.

indicates what was supposed to be the proper extent of ordinary grants. The cultivation of the lands under a title held in common, by the people at Plymouth, was originally intended as an arrangement for seven years: but it proved an incentive to idleness instead of industry; and, after a trial of two or three years, an acre of land was allotted to each in severalty, "to them and theirs, as near the town as might be."* This occupation in severalty made a great change in the industry of the people, and of course in the production of the necessaries of life;† and, in January, 1627, it was agreed in full court, "that the first division of the acres should stand and continue firm, according to the former division made unto the possessors thereof and to their heirs for ever; free liberty being reserved for all to get firewood thereon;"‡ but the timber-trees were excepted for the owners of the ground. At the same time a second division of twenty acres to every person was made.§ Perhaps this limited experience had its effect in inducing a different mode of dividing the land in the early settlement of the colony of Massachusetts Bay.

It appears very clearly from this statement, that the early settlers at Plymouth had very moderate desires respecting the acquisition of real estate. They set up trading-houses on the Kennebec and Penobscot, and settlements were formed at Scituate about 1628 (although the lands were not laid out "by order of court" until 1633 §), and at Duxbury about 1632, the settlers "promising to live in the town [Plymouth] in the winter, that they might the better repair to the worship of God."|| The Plymouth colony, as we should expect under such circumstances, did not increase with great rapidity.

The whole colony constituted but one church, and there was but one town until 1633, when those who were on the

* Bradford's Hist., 167; 1 Baylies' Memoir, 158.

† 2 Hutch., 419, 420.

‡ 11 Plymouth Col. Records, 4; Col. Laws, Brigham's ed., 29.

§ Deane's Hist. Scituate, 8.

|| Winsor's Hist. Duxbury, 10.

side of the bay opposite to the town, (the place where Duxbury now is,) as Hutchinson says, "broke from the rest, because of the difficulty of travel, and became a distinct society."* It is mentioned, however, in the records of the colony, in November of this year, as "in the liberties of Plymouth" (p. 20).

The settlement at Scituate had had a minister prior to 1634, and in that year a society was organized and a minister settled (Jan. 18, 1634, O.S.). A house for public worship was erected some years earlier.†

When these settlements became separated from the settlement at Plymouth, by an organization for the separate support of the gospel, it was the natural course of things that they should become separated for the management of their local temporal affairs; and this was probably done in the first instance without particular authority, but was soon authorized by acts of incorporation, which constituted them separate towns; and thus they had legal power to manage such of their affairs as were purely local, and to make by-laws for that purpose (subject, however, to such laws and regulations as should be made by the General Court), the freemen of these new towns still remaining members of that court.

The emigrants had escaped from the tyranny of ecclesiastical power. The principle for which they contended was liberty to worship God according to the dictates of their own consciences. Of course, when they associated together for the purpose of supporting public worship, it was "a church without a bishop;" its creed, polity, and proceedings being regulated by the voices or votes of the members of the church, subject to some extent to the great body of the churches when met in council. This is the fundamental law of Congregational action. The principle that the right to rule is

* 2 Hutch. Hist., 415.

† Deane's Hist. Scituate, 30.

in the people, and not transmitted by succession in office, or by hereditary descent, was, of course, the principle which governed the companies in England in their temporal affairs. The founders of the colony at Plymouth applied it to their community by their compact, and founded "a state without a king," so far as their immediate government was concerned. So far as they acted under their charters afterwards, the principle was the same. And this was true also of the colony of Massachusetts. The emigrants acted, indeed, under the authority of companies which had procured grants from the king; but there was no officer deputed by the royal authority to govern or direct their affairs. The freemen of the colony, — those who were admitted to participate in its government, — assembled in General Court, consulted and directed what should be done, and their orders and ordinances became the laws of the colony. These laws were at first made by and for the inhabitants of a single settlement or town. As the settlements extended, the single community remained, under this single rule in relation to all their affairs, until it became not only a great inconvenience for those in the new settlements in the vicinity to attend the church at Plymouth; but the necessity for so doing ceased by the ability of the other settlements to provide a minister for themselves, and sustain public worship. And when they were able to do this, they had their particular local interests, which they could best understand and provide for. There was then not only no necessity that they should go to Plymouth to procure orders and rules for the regulation of such of their affairs as were entirely local, but there was no reason why the inhabitants of Plymouth should have a voice in the direction of such matters. It was not consistent with the principle upon which the colony was founded, that it should be so. That principle required, that, while they should remain a part of the whole, and be subject to the general voice in relation to all matters which concerned the

whole colony, they should be allowed to be, what their separate settlements had made them: viz., distinct communities, in regard to such affairs as concerned none but themselves; and this was accomplished by acts of incorporation, passed by the whole body in General Court, which recognized them as towns, and gave them the general powers of corporations.

Originating, however, in this necessity and propriety that the people thus separated by distinct settlements should manage their local concerns, this was only a part of the purpose of their organization. There were divers things to be done which concerned the general welfare, and which at the same time would or might promote the local interest of these settlements; and other things, which, while they were mainly of public concernment, (and for which therefore the rule ought to be determined by the general authority of the colony,) could be more conveniently done and performed by these local organizations. And the performance of these things could be, and was therefore, required of them. It was made a part of their duty, and penal consequences attached to the non-performance. And thus there grew up a system of government, embracing two jurisdictions, administered by the same people: the colonial government, having jurisdiction over the whole colony, administered by the great body of the freemen, through officers elected and appointed by them; and the town governments, having limited local jurisdiction, such as was conceded to them by the colonial government, administered by the inhabitants within the towns, through officers and agents chosen by them. In some respects they were like the borough towns in England. In others, entirely dissimilar.

At a General Court held in October, 1633, "it was by full consent agreed upon and enacted, that the chief government be tied to the town of Plymouth, and that the Governor for the time being be tied there to keep his residence and

dwelling; and there also to hold such courts as concern the whole." * This indicates an extension of the settlements.

Few of the early regulations have been preserved.† But in 1632 it was enacted, "in regard to our dispersion so far asunder, and the inconvenience that may befall, that every inhabitant provide himself a sufficient musket or other serviceable piece for war," and a certain quantity of ammunition.‡ In 1633 it was enacted that every constable-rick have a sufficient pound to impound cattle that shall transgress any such orders as are or shall be made.§ The constable-rick seems to have been the territorial division in which the constable was empowered to exercise his duties and powers, and might be a ward or a town. In January, 1633, a constable and messenger was chosen for Plymouth, a constable for the ward of \wedge bounded, &c.; and a constable for the ward of Scituate. In January, 1634-35, it was agreed that the constables of Duxbury and Scituate should remain in their places another year; and in 1635 others were chosen.

In October, 1634, certain persons were appointed for laying out highways "for Duxbury side," and others for "Plymouth." And in March, 1635-36, it was ordered "that at such convenient time as shall seem meet to the Governor and Council, upon warning given, all men meet together for the mending of the highways, with such tools and instruments as shall be appointed." ||

In 1636, at a General Court held in October, "the ordinances of the colony and corporation being read, divers were found worthy the reforming, others the rejecting, and others fit to be instituted and made; it was therefore ordered

* 1 Plymouth Col. Records, 16.

† Baylies says, "It is not known that they had any written law during this period" (to 1630); vol. i. p. 159. But the subsequent edition of the Colony Laws contains between two and three pages.

‡ 11 Plymouth Col. Records, 14; Col. Laws, 31.

§ 11 Plymouth Col. Records, 16, 200; Col. Laws, 34.

|| 1 Plymouth Col. Records, 21, 31, 32, 36, 39.

and agreed, that four for the town of Plymouth, two for Scituate, and two for Duxbury, should, as committees for the whole, be added to the governor and assistants, to rectify and prepare such as should be thought most convenient, that, if approved, they may be put in force the next General Court."* This may be regarded as the first convention for revising the laws; and we have here a representation from the plantations, or settlements, not yet arrived at the dignity of towns, which was to report a draft for the consideration of the General Court.

In the revision, which was made in November of the same year on the report of the committee, it was enacted "that the town of Plymouth, viz., the purchasers and freemen, have liberty of themselves to dispose of the lands that are or shall belong unto them, to such they think meet to receive in unto them. And also to make such orders for their convenient and more comfortable subsistence, as shall by them be thought most meet and convenient, provided they be not contrary to the public ordinance of the Government."

"That Scituate be allowed the like liberties, and to dispose of the grounds between the North River and Cowehasset, provided they have recourse to Plymouth in case of justice."† This shows that freeholders as well as freemen might vote in the town meetings in relation to town affairs.

In June, 1637, it was enacted by the court, that "Ducks-borrow" shall become a township, and unite together for their better security, and have the privileges of a town; only their bounds and limits shall be set and appointed by the next court."‡

We have thus the origin of the first three towns in the Plymouth colony.

It has been generally supposed, that, for many years after

* 1 Plymouth Col. Records, 43.

† 11 Plymouth Col. Records, 18; Col. Laws, Brigham's ed., 47.

‡ 1 Plymouth Col. Records, 62; Winsor's Hist. Duxbury, 11.

the settlement of New England, no one was admitted to participate in the election of officers, and in the making of the laws, but members of the church. This was not true of the Plymouth colony. There is nothing in the compact or charter, nor have I found any thing in the laws of the colony, requiring that as a qualification.

The compact constituted the signers of it an associated community, of which, as a matter of course, no other person could become a member without their consent.

The Great Patent to the Council at Plymouth expressly authorized the company, in their discretion, from time to time, to admit such and so many persons to be made free, and enabled to traffic, and to have and enjoy lands, as they should think fit.

By the first patent to Pierce and his associates, the Plymouth Company, calling themselves the President and Council of New England, not only covenanted to grant letters of incorporation, authorizing the grantees to make orders and laws for the rule and government of all persons to be transported and settled upon the land; but a clause was inserted by which it was made lawful for them, for their several defence and safety, to "expulse, repel, and resist, by force of arms," all such persons as, without the special license of the President and Council, should attempt to inhabit within the several precincts and limits of their plantation.

The charter to Bradford and his associates expressly conferred upon the grantees the power to make orders, &c., as well for the better government of their affairs, "and the receiving or admitting any to his or their society."

The power of exclusion from participation in the government of the colony was therefore perfect from the first; and they doubtless exercised it with a view of admission to the freedom of the settlement and corporation, of such only as were deemed worthy. But they did not limit their discre-

tion in the admission of freemen, by the adoption of any order or rule for a long period.

In the revision of 1636, it was enacted, "that the laws and ordinances of the colony, for the government of the same, be made only by the freemen of the corporation, and no other; provided that, in such rates and taxations as are or shall be laid upon the whole, they be without partiality, so as the freeman be not spared for his freedom, but the levy be equal." * Miles Standish was a very efficient freeman, but not a church-member. In 1656, it was ordered, that the deputies of the towns where persons live who are admitted to be freemen, "shall propound them to the court, being such as shall be also approved of by the freemen in such towns where they live;" and, in 1658, they were required to stand propounded one whole year.† In the same year it was enacted, "that no Quaker, Rantor, or any corrupt person, shall be admitted to be a freeman;" also "all such as are opposers of the good and wholesome laws of the colony, or manifest opposers of the true worship of God, or such as refuse to do the country service, being called thereunto," "being duly convicted of all or any of these." And it was further enacted, "that if any person or persons that are or shall be freemen of this corporation, that are Quakers; or such as are manifest encouragers of them, and so judged by the Court; or such as shall speak contemptuously of the Court and of the laws thereof; and such as judged by the Court grossly scandalous, as liars, drunkards, swearers, &c.,—shall lose their freedom of this corporation." ‡ The provision excluding quakers and ranters from admission would have been entirely unnecessary, if church-membership had been requisite.

In the revision of the laws, published in 1671, it was required, in order to be admitted a freeman, that the party

* 11 Plymouth Col. Records, p. 11.

† 11 Col. Records, 68, 79.

‡ 11 Col. Records, 177.

should be twenty-one years of age, have the testimony of his neighbors that he was of sober and peaceable conversation, orthodox in the fundamentals of religion, and have at least twenty pounds rateable estate. This is requiring something more, as well as something less, than church-membership.

The next section placed a restriction upon the right of suffrage in relation to town-officers. The provision, with its preamble, is deserving of quotation entire: "And because it greatly concerns the good and weal of the whole Colony to have a good choice made in the several towns, of selectmen, deputies, grand-jurymen, constables, &c.; and it appears that some do abuse their liberty in voting for the choice of such officers, and are either factious or slight in their choice,—it is therefore enacted, that henceforth none shall have power to vote on such accounts in town-meetings, but such as are freemen of the corporation, or freeholders of twenty pounds rateable estate, orthodox in the fundamentals of religion, of good conversation, and having taken the oath of fidelity." *

The revision of 1636, before referred to, provides for the election of constables for each part, and other inferior officers. The oath of the constable describes him as an officer of the "ward;" and he was diligently to see that His Majesty's peace commanded be not broken, to apprehend suspicious persons, to serve warrants and summons directed to him, "to see the highways for man and beast be made and kept in convenient repair, and therefore be also appointed surveyor for the liberty he is chosen," &c. By the same code it was provided, "that in every constable-rick there be a pair of stocks erected. Also a cage, which shall be of competent strength to detain a prisoner, and a whipping-post; and these to be erected in such places as shall be thought meet by the

* Plymouth Col. Laws, Brigham's ed., 258.

several neighborhoods where they concern, upon the penalty X^s for any township which shall be defective herein.”*

In January, 1636,—before the incorporation, it would seem, although recorded after,—it was ordered that the inhabitants of Plymouth should “have liberty to meet together to make orders for the herding of their cattle, and such other things as shall be needful for their more neighborly living together.” In 1639, a like provision was enacted “for all the townships” “allowed or to be allowed.”†

In September, 1638, it was enacted that the inhabitants of Scituate should build a bridge over South River; that the inhabitants of Sandwich and Yarmouth should build one over Eel River; and that the inhabitants of the townships of Plymouth and Duxbury should build one over Jones’s River.‡

In March, 1639, reciting that the townships had formerly had liberty to meet and make town-orders, which were thought to be defective, “for that they conceived they had not power to make assessments, rates, and taxes, for raising such necessary expenses as shall be disbursed about the general occasions of the towns concerning the Commonwealth,”—it was enacted, “that every township shall have liberty to meet together and make levies, rates, and taxes for their town’s charges, and to distrain such as shall refuse to pay the same, upon warrant of the Court or Governor.” The next year it was provided, that, where persons had relief from the towns, and had children and did not employ them, the towns might take order that the children should be put to work in some fitting employment, or placed out by the towns; also that every township should provide a barrel of powder, and lead or bullets answerable, to be kept ready for defence in time of need. In 1641, it was enacted that every township do carry a competent number of pieces, fixed and complete, with

* 11 Plymouth Col. Records, 10, 11, 16; Col. Laws, Brigham’s ed., 37, 40, 41.

† 11 Plymouth Col. Records, 25, 32.

‡ 11 Col. Records, 28.

powder, shot, and swords, every Lord's Day, to the meetings. And, in 1642, it was required that all the towns make wolf-traps and bait them, and look to them daily, upon the penalty of ten shillings for every trap which should be neglected. The number to be made by each town was specified.*

The next year, provision was made against bringing into any town any person whose support might become chargeable to the town; that every person that lived, and was quietly settled, in any township, and not excepted against within three months, should be reputed an inhabitant [gain a settlement]; and that every township should make competent provision for the maintenance of its poor.†

We have here some of the original powers and duties to be exercised and performed by the towns and their officers, upon their incorporation. They are, it is perceived, of a very miscellaneous character. Other powers, privileges, and duties were added from time to time, as it became apparent that these organizations were adapted to their exercise and performance. And so changes have been made since, as occasion seemed to require. The duty of keeping the stocks and the whipping-post has been abolished by the humanity of later times. That of keeping the *cage* [jail] has been transferred to the counties. The maintenance of the wolf-traps is no longer required.

In March, 1638, complaint having been made that the freemen were put to many inconveniences and great expenses by their continual attendance at the courts, it was enacted, "that every town shall make choice of two of their freemen, and the town of Plymouth of four, to be committees or deputies to join with the Bench [Court of Assistants], to enact and make all such laws and ordinances as shall be judged to be good and wholesome for the whole. Provided that the laws they do enact shall be propounded one court, to be consid-

* 11 Plymouth Col. Records, 25, 32, 28, 36, 38.

† 11 Col. Records, 40, 41.

ered upon until the next court, and then to be confirmed, if they shall be approved of (except the case require present confirmation). And that if any act shall be confirmed by the Bench and committees, which, upon further deliberation, shall prove prejudicial to the whole, that the freemen at the next election court, after meeting together, may repeal the same, and enact any other that may be useful to the whole. And that every township shall bear their committee's charges, and that such as are not freemen, but have taken the oath of fidelity, and are masters of families and inhabitants of the said towns, as they are to bear their part in the charges of their committees, so to have a vote in the choice of them, provided they choose them only from the freemen of the said town whereof they are; but, if any of such committees shall be insufficient or troublesome, that then the Bench and the other committees may dismiss them, and the town to choose other freemen in their place." *

Such was the foundation of the system of representation in the legislative department of the Plymouth colony. The representatives were not chosen by the freemen alone, but inhabitants of the towns who were masters of families and had taken the oath of fidelity had an equal right to participate in the election, while freemen only could be elected. General Courts, for the election of the officers of the colony, continued to be held yearly; the freemen who could not conveniently attend being allowed to give in their votes for Governor, assistants, commissioners, and treasurer, in the town-meetings, sealed up, which were then to be taken by the deputies to the General Court, and counted with those of the freemen who were present.† If some of the principal elements of this system could be incorporated into our present system, State and National, and faithfully enforced, there would be less reason for exception to the proceedings of our

* 11 Plymouth Col. Records, 31.

† 11 Plymouth Col. Records, 81.

legislative bodies, and the laws would have a greater measure of stability.

In 1639 a General Court was held, at which deputies attended from seven towns.*

In 1641 there were eight towns; in 1658, twelve.†

A representative system was introduced into the Massachusetts colony at an earlier date, by reason of the more rapid increase of that colony.

The settlements in the Massachusetts colony commenced in a different manner,—dispersed in the outset, so that the separation into towns, which, as we have seen was arrived at in the Plymouth colony by slow degrees, took place at once, by reason of the transfer of the government of the plantation to New England, and a greater emigration; and from the nature and necessities of the case.

Through fishing and other voyages, divers persons—some in companies, some singly—had, prior to 1629, settled within the limits of what was subsequently the Massachusetts colony.‡

The charter of “the Governor and Company of Massachusetts Bay in New England,” granted by Charles I., March 4, 1628–9, under which the settlements were afterwards made in this colony, was, so far as our present inquiry is concerned, substantially like that to the Plymouth Company granted by James. The differences are hardly worth noting in detail. The grantees and their associates were constituted a body politic and corporate. Reciting a grant by the Plymouth Company, in England, of a tract of land between the Merrimack River and Charles River, &c., it granted and confirmed that grant in fee. The lands were to be held in free and common socage. A Governor, Deputy-governor, and assistants were to be elected out of the freemen, for one year, who were to hold courts. And a Great and General Court was

* 1 Plymouth Col. Records, 126. † See 11 Plymouth Col. Records, 37, 182.

‡ See Hubbard's Hist. of New England; 5 Coll. Mass. Hist. Soc., 2d Series, 184.

to be holden by the officers and freemen of the company, at which officers were to be elected and freemen might be admitted. Ample power was given to this General Court to make laws, ordinances, &c. All the subjects of the realm inhabiting there, were to have and enjoy all liberties and immunities of free and natural subjects.

The proceedings under the charter show that it was contemplated that the lands should be granted, in small parcels, to those who adventured in the company, and those who settled in the colony.

At a General Court held in London, April 30, 1629, it was ordered that thirteen of the most wise, honest, expert, and discreet persons, resident upon the plantation, should have the managing and ordering of the Government, to be entitled "The Governor and Council of London plantation of Massachusetts Bay, in New England." John Endicott was chosen Governor, and seven persons to be of the council. They were authorized to choose three others; "and, to the end that the former planters there may have no just occasion of exception, as being excluded out of the privileges of the company," it was ordered that such of them as were willing to live within the limits of the plantation should be "authorized to make choice of two, such as they shall think fit," to make up the number of twelve of the Council.*

It was further agreed on and ordered that the Governor for the time being, and the Deputy-governor in his absence, should have power to call courts and meetings, in places and at times convenient, as to his discretion should seem meet; and that the Governor or Deputy, together with the Council, being assembled, or the greater number of them, whereof the Governor or Deputy should be one, were "authorized by this act, grounded on the power derived from His Majesty's charter, to make, ordain, and establish, all man-

* 1 Records of Mass., 38, 361.

ner of wholesome and reasonable laws, orders, ordinances, and constitutions (so as the same be no way repugnant or contrary to the laws of the realm of England), for the administering of justice upon malefactors, and inflicting condign punishment upon all other offenders; and for the furtherance and propagating of the said plantation, and the more decent and orderly government of the inhabitants resident there." *

Under this arrangement, a settlement was made at Salem. In May, provision was made for granting lands. It appears from the record that this was done with a view to building a town.†

On the 29th of August, of the same year, it was determined that the patent and government should be transferred to New England, and settled there; and John Winthrop was elected Governor, Oct. 20.

The first Court of Assistants appears by the records to have been held at Charlton (Charlestown), Aug. 23, 1630, about two months after the arrival of Governor Winthrop and those who accompanied him. At this court, "Impr., it was propounded how the ministers should be maintained. Mr. Wilson and Mr. Phillips only propounded. It was ordered that houses be built for them at the public charge. Sir Richard Staltonstall undertook to see it done at his plantation for Mr. Phillips, and Mr. Governor at the other plantation for Mr. Wilson." After specifying the particulars of the maintenance, it is added, "All this to be at the common charge, those of Mattapan and Salem only excepted." ‡

Thomas Dudley, one of the Assistants, and afterwards Governor, writing to the Countess of Lincoln, in March, 1631, gives reasons why "we were forced to change counsel, and for our present shelter to plant dispersedly, some at Charlestown, which standeth on the north side of the mouth of

* 1 Records of Mass., 364.

† 1 Records of Mass., 43, 363, 364.

‡ 1 Records of Mass., 73.

Charles River; some on the south side thereof, which place we named Boston (as we intended to have done the place we first resolved on); some of us upon the Mistic, which we named Meadford; some of us westward, on Charles River, four miles from Charlestown, which place we named Watertown; others of us two miles from Boston, in a place we named Roxbury; others upon the river of Sawgus, between Salem and Charlestown; and the western men four miles south from Boston, at a place we named Dorchester. This dispersion," he adds, "troubled some of us, but help it we could not, wanting ability to remove to any place fit to build a town upon; and the time too short to deliberate any longer, least the winter should surprise us before we had builded our houses." *

At a Court of Assistants, Sept. 7, it was "ordered that Trimountain shall be called Boston; Mattapan, Dorchester; and the town upon Charles River, Waterton." † Also ordered, that no person should plant in any place within the limits of the patent, without leave from the Governor and assistants, or the major part of them. "And that a warrant shall presently be sent to Aggawam to command those that are planted there forthwith to come away." Sept. 28, constables were chosen by the Court of Assistants for Salem and Dorchester, "to continue in office for a year, and after, until new be chosen." At the same time it was ordered, that there should be collected and levied by distress, out of the several plantations, for the maintenance of Mr. Patrick and Mr. Underhill, the sum of 50*l.*, which sum was proportioned among Charlton, Boston, Dorchester, Roxbury, Waterton, Medford, Salem, Wessaguscus, and Natascett. On the 30th

* See 8 Coll. Mass. Hist. Soc., First Series, 39; Young's *Chronicles of Massachusetts*, 313; Hubbard's *Hist.*, 135.

† Some of the subsequent acts of incorporation are models of brevity: "Wessacumcon is allowed to be a plantation." Its name was changed to Newbury. "Winnacunnett is allowed to be a town."

of November, there was a similar assessment upon a part of these towns and upon Winnett-semett, for the maintenance of Mr. Wilson and Mr. Phillips.*

At a General Court, May 18, 1631, Winthrop was chosen Governor, and Dudley Deputy-governor, for the year ensuing. And it was "ordered, with full consent of all the commons then present, that once in every year at least a General Court shall be holden, at which it shall be lawful for the commons to propound any person or persons whom they shall desire to be chosen Assistants; and, if it be doubtful whether it be the greater part of the commons or not, it shall be put to the poll. The like course to be holden when they, the said commons, shall see cause, for any defect or misbehaviour, to remove any one or more of the Assistants; and, to the end the body of the commons may be preserved of honest and good men, it was likewise ordered and agreed, that for time to come no man shall be admitted to the freedom of this body politic, but such as are members of some of the churches within the limits of the same."† In September, 1635, it was "ordered that none but freemen shall have any vote in any town, in any action of authority or necessity, or that belongs to them by virtue of their freedom, as receiving inhabitants, and laying out lots, &c."‡ This is, perhaps, the first inter-

* 1 Records of Mass., 75, 76, 77, 82.

† 1 Records of Mass., 87.

‡ 1 Records of Mass., 161. Peterson, in his "History of Rhode Island," quotes from an article in the "American Quarterly Review," of June, 1835, in which the reviewer, speaking of the "superstition, bigotry, and intolerance" of "our ancestors," says, "Let us look for a moment to the Pilgrim Fathers, to the colony at Plymouth. Speaking of them, a judicious writer observes;"—and then follows what purports to be a long extract in relation to the Massachusetts colony, containing this paragraph: "The first General Court was held at Charlestown, on board the ship 'Arabella.' A law was passed, declaring that none should be admitted as freemen, or be entitled to any share in the government, or even to serve as jurymen, except those who had been received as members of the church; *by which measure, every person whose mind was not of a particular structure, or accidentally impressed with peculiar ideas, was at once cast out of society, and stripped of his civic rights.*"—See Peterson's Hist. of R. I., pp. 22, 23; Amer. Quar. Review, No. 34, N.S., p. 327.

The mixing up, by the reviewer and the historian, of the "Pilgrim Fathers" of the Plymouth colony, with the proceedings of the "Puritans" in the Massachusetts colony

ference, by the General Court, with the authority of the inhabitants of the towns to manage such of their affairs as were of a strictly local character.

There had been, before that time, in addition to the apportionment of taxes upon the towns for the support of ministers, assessments upon them for the making of a creek at the "new-town" (Cambridge), and for the making of a palisado about it, in anticipation of its becoming the seat of government. The towns had also been required to furnish arms to those of their inhabitants who were unable; to provide certain weights and measures; to repair fences which had been adjudged by the inhabitants insufficient, if the owner did not after warning, the owner being made liable to pay the charges. It was ordered also, in 1634, that the constable and four or more of the chief inhabitants of every town, to be chosen by the freemen there, should make surveys of cornfields, mowing-grounds, and other lands, improved or inclosed, or granted by special order of the Court, of every free inhabitant there; and should enter the same in a book, and deliver a transcript thereof into the Court, that it might be recorded, and be a sufficient assurance of title. In less than a year afterwards, it was agreed, that those which are not freemen, that had taken or should

is bad enough. But this is not the worst error. The Pilgrim Fathers, as we have seen, never adopted the rule, that, in order to be a freeman, the candidate must be a member of the church. There is no good reason to suppose that the first General Court of the Massachusetts colony (Oct. 19, 1630), was held on board the "Arbella."—See 1 Winthrop's Hist., Savage's ed., 35, note 4. Where the Court was held, however, is unimportant. Officers could not be chosen at the Court of Assistants, held Aug. 23, 1630, even under the order of the Company in England of April 30, 1629. The right of election was in the General Court. But no order making church-membership a requisite to admission as a freeman was passed until near nine months after Aug. 23, 1630; and none which limited voting in town affairs, generally, to the freemen, until five years after that time.

Even in Rhode Island, not only the franchise, but ownership, was restricted. Peterson says of the proprietors there: "Those whom they considered turbulent and unruly, they would not admit to ownership, or to exercise the privileges of freemen."—*Hist. of R. I.*, 34.

For the rule in the Connecticut and New-Haven colonies, see 2 Palfrey's Hist. N. E., 8; New-Haven Col. Records, Hoadly's ed., 14, 15.

take the oaths of fidelity, should have the same assurance of land as was provided for freemen.* The bounds of towns also were established by the Court of Assistants, and differences between them determined.

Thus far the settlements have been in advance of the laying out of the towns. But, in 1635, it was "ordered that there shall be a plantation settled about two miles above the falls of Charles River, on the north-east side thereof, to have the grounds lying to it on both sides of the river, both upland and meadow, to be laid out hereafter as the Court shall appoint." †

In 1634, it was ordered that the constable of every plantation should, upon process received from the secretary, give notice to the freemen of the plantation to send so many of their members as the process should direct, to attend upon public service; and it was agreed, that no trial should pass upon any for life or banishment, but by a jury so summoned or by the General Court.‡

In 1635, reciting that "whereas particular towns have many things which concern only themselves and the ordering of their own affairs, and disposing of businesses in their own town, it was ordered, that the freemen of every town, or the major part of them, shall only have power to dispose of their own lands and woods, with all the privileges and appurtenances of the said towns; to grant lots and make such orders as may concern the well ordering of their own towns, not repugnant to the laws and orders here established by the General Court; as also to lay mulcts and penalties for the breach of their orders, and to levy and distrain the same, not exceeding the sum of twenty shillings; also to choose their own particular officers, as constables, surveyors for the highways, and the like." §

* 1 Records of Mass., 137.

† 1 Records of Mass., 118.

‡ 1 Records of Mass., 156.

§ 1 Records of Mass., 172.

In 1638, it was declared, that every inhabitant in any town was liable to contribute to all charges, both in church and commonwealth, whereof he did or might receive benefit; and that every inhabitant who did not voluntarily contribute, proportionably to his ability, with other freemen of the same town, to all common charges, as well for upholding the ordinances in the churches as otherwise, should be compelled thereto by assessment and distress, to be levied by the constable or other officer of the town as in other cases.*

The preceding orders, so far as they limit the right of voting to the freemen, were modified in 1647, when the General Court — “taking into consideration the useful parts and abilities of divers inhabitants amongst us which are not freemen, which, if improved to public use, the affairs of this commonwealth may be the easier carried an end, in the several towns of this jurisdiction” — declared that it should be lawful for the freemen in any town “to make choice” of such inhabitants, though non-freemen, who have taken or should take the oath of fidelity to this government, to be jurymen, and to have their vote in the choice of the selectmen for town affairs, assessment of rates, and other prudentials proper to the selectmen of the several towns; provided still that the major part of all companies of selectmen be freemen from time to time that shall make any valid act: as also, where no selectmen are, to have their vote in the ordering of schools, herding of cattle, laying out of highways, and distributing of lands;” “provided also that no non-freeman shall have his vote until he have attained the age of twenty-four years.”†

In 1649, it was ordered that, in issuing warrants for jurymen, respect should be had to the number of inhabitants in each town.‡

Prior to that period, we find, further, that highways might

* 1 Records of Mass., 240.

† 2 Records of Mass., 197.

‡ 2 Records of Mass., 285.

be laid out and established by the town authorities; that it was the duty of the towns to make and keep in repair highways and bridges, and that they were liable for all damages sustained by defects in the highways; that towns of fifty householders should have a school, and towns of one hundred families or householders should set up a grammar school, the master thereof being able to instruct youth so far that they might be fitted for the university,—the several towns being liable to a penalty for non-performance;—that they might purchase and hold a parsonage; and were to elect officers of the train-bands, which were the militia in the town.

The privileges, and more especially the duties, of these corporations have been extended from time to time since that period.

Having ascertained the mode in which the towns came into existence as corporations, and thereby obtained the power to make by-laws, and the other powers incident to a corporate existence; and how, at the same time and subsequently, they were subjected to the performance of particular duties, and received grants of privileges,—the change, by and through which the General Court of the Massachusetts colony was no longer composed of the great body of the freemen of the colony, but of deputies (or, as is now generally said, representatives), elected by the towns, may well demand our attention.

The charter, as we have seen, provided that there should be “a Great and General Court.” This Court was to be holden four times in each year, by the Governor or Deputy-governor, and such of the Assistants, not less than six, and the freemen, who should be present; and had power to admit freemen, elect officers, and make laws. This was attended with no material inconvenience, so long as the Company was a body of “adventurers,” residing in England, making the laws there, and acting by officers and agents for the purpose of disposing of land, and trading in furs, &c., in New England.

But when it was perceived, that the project of settling a

colony required a government within the colony, and it was debated whether it was not expedient that the charter and government should be transferred to New England, the government of the Company established there, and the settlers admitted as freemen,—it must have become apparent, that the success of the enterprise would enlarge the number of the freemen to such an extent, that it would be impracticable for the great body of them to meet together, elect members and officers, and make the laws; and that some other constitution of a legislative body was desirable. This consideration probably had its weight, along with others, in leading to the adoption of that part of the order of April 30, 1629, by which it was agreed on and ordered, that the Governor or Deputy-governor together with the Council, to be organized under that order, were authorized by that act, “grounded on the power derived from His Majesty’s charter, to make, ordain, and establish all manner of wholesome and reasonable laws, orders,” &c.

Notwithstanding there was nothing in the charter on which to ground such a provision, it does not appear to have met with any immediate opposition. On the contrary, we find that, at a General Court held at Boston, Oct. 19, 1630, “For the establishing of the government. It was propounded if it were not the best course that the freemen should have the power of choosing assistants, when there are to be chosen; and the assistants, from amongst themselves, to choose a Governor and Deputy-governor, who, with the assistants, should have the power of making laws, and choosing officers to execute the same. This was fully assented to by the general vote of the people and erection of hands.”* How it happened that such an attempt to depart from the charter, in a fundamental point, should have been assented to by a general vote of the people interested, does not appear.

* 1 Records of Mass., 79.

Mr. Savage, in a note to Winthrop's "History," says, "The company, or great body of the colony corporation, submitted at first to the mild and equal temporary usurpation of the officers chosen by themselves, which was also justified by indisputable necessity." *

The reason is not very material. If there was indifference, it did not last long. At a General Court, held May 14, 1634, it was "agreed that none but the General Court hath power to choose and admit freemen." — "That none but the General Court hath power to make and establish laws, nor to elect and appoint officers as governor, deputy-governor, assistants, treasurer, secretary, captain, lieutenants, ensigns, or any of like moment, or to remove such upon misdemeanor; as also to set out the duties and powers of the said officers." — "That none but the General Court hath power to raise monies and taxes and to dispose of lands, viz., to give and confirm proprieties."

At the same court it was agreed, that a fine should be set upon the Court of Assistants and Mr. Mayhew, "for breach of an order of court against employing Indians to shoot with pieces;" one-half to be paid by the Court of Assistants, then in being, who gave the leave.† The margin of the record shows that the fine was remitted. These proceedings evidently show a determination on the part of the freemen to assert their rights of government, and to hold the Court of Assistants to a strict responsibility. Is it unreasonable to suppose, that the spirit which dictated these acts had been fostered by the exercise of the power of making by-laws and orders, and transacting business under their town organizations?

At the same General Court it was "further ordered, that it shall be lawful for the freemen of every plantation to choose

* 1 Winthrop's History, Savage's ed., 85, note.

† 1 Records of Mass., 117, 118. See also 1 Barry's Hist. of Massachusetts, chap. viii., p. 204.

two or three of each town, before every General Court, to confer of and prepare such public business as by them shall be thought fit to consider of at the next General Court; and that such persons as shall be hereafter so deputed by the freemen of the several plantations, to deal in their behalf in the public affairs of the commonwealth, shall have the full power and voices of all the said freemen, derived to them for the making and establishing of laws, granting of lands, &c., and to deal in all other affairs of the commonwealth wherein the freemen have to do; the matter of the election of magistrates and other officers only excepted, wherein every freeman is to give his own voice." *

Here we have the system of representation, which was two years afterwards introduced into the colony of Plymouth.

In September, 1636, the representation was limited and proportioned among the towns by an order "that, hereafter, no town in the plantation that hath not ten freemen resident in it shall send any deputy to the General Courts; those that have above ten and under twenty, not above one; betwixt twenty and forty, not above two; and those that have above forty, three, if they will, but not above." †

This system of town representation was continued substantially for more than two centuries, and was finally abandoned in 1857, and a district system substituted, because,

* 1 Records of Mass., 118; 1 Winthrop's Hist., 157. Hutchinson says, "At a General Court for elections, in 1634, twenty-four of the principal inhabitants appeared as the representatives of the body of freemen; and, before they proceeded to the election of magistrates, the people asserted their right to a greater share in the government than had hitherto been allowed to them." — 1 Hutchinson, Hist. of Mass., 39. This has been supposed to indicate that these twenty-four persons "declared themselves to be the representatives of the body of the freemen, the freemen having assented;" that "it was a voluntary organization, or, as it were, a Committee of Safety to frame government." — Debates in the Convention of Massachusetts in 1853, 4to ed., vol. i. p. 473; 8vo ed., vol. i. p. 910. But this is not probable. The "twenty-four persons," supposing that they appeared, probably came exercising their own rights as freemen, and claiming that in what they said they spoke the sentiments of the freemen, and represented them in that sense.

† 1 Records of Mass., 178.

the smaller towns having one member and the larger a proportionate number, the representative body became too large for the convenient transaction of business, and the expense of maintaining it an unnecessary tax. In 1635, it was ordered that the deputies should be elected by papers [ballots], as the Governor was chosen.*

In March, 1643-4, it was "ordered, first, that the magistrates may sit and act business by themselves, by drawing up bills and orders which they shall see good in their wisdom; which having agreed upon, they may present to the deputies to be considered of, how good and wholesome such orders are for the country, and accordingly to give their assent or dissent: the deputies in like manner sitting apart by themselves, and consulting about such orders and laws as they in their discretion and experience shall find meet for common good; which agreed upon by them, they may present to the magistrates, who, according to their wisdom, having seriously considered of them, may consent unto them or disallow them; and when any orders have passed the approbation of both magistrates and deputies, then such orders to be engrossed, and, in the last day of the court, to be read deliberately, and full assent to be given; provided, also, that all matters of judicature which this court shall take cognizance of shall be issued in like manner."† Thus this town representation became a distinct branch of legislation and judicature, the legislative body being divided into two branches, with a negative upon each other. If the wisdom, discretion, experience, and deliberation, mentioned in this order, could be secured at the present day, our laws would be much more likely to be "good and wholesome" for the country.

The particular manner in which the towns should organize, does not appear to have been prescribed by law. Their officers were such as their business seemed to require, and their

* 1 Records of Mass., 157.

† 2 Records of Mass., 58.

by-laws and regulations such as commended themselves to the judgment of the several communities, having doubtless a similarity in their main features. We derive some knowledge of their early proceedings from the Town Histories.

Charlestown was occupied immediately after the arrival of Governor Winthrop, and it was intended to build a "great town" there.

A skilful engineer was employed to "model and lay out the form of the town."* — As this seems for a time to have been regarded as the most important settlement, and many of the most distinguished of the emigrants settled there, its proceedings are of more than ordinary interest, as they probably furnished the model for those of other towns, and serve to elucidate their history. They furnish some intelligence which I have found nowhere else.

It was jointly agreed and concluded, that each inhabitant have a two-acre lot to build upon. Afterward further divisions were made to the original settlers, and to others who became inhabitants.

There is a record of "the inhabitants that first settled in the place, and brought it into the denomination of an English Towne;" but it had little resemblance to an English town, except in the fact that it had streets, and was inhabited.

The inhabitants of Charlestown for a few years transacted all their local business in "town-meeting." Prior to any law making it a duty, they provided for the support of their poor, &c. In 1634, they empowered a committee to lay out lots and make rates; and a committee to be at town-meetings, and assist in ordering their affairs. Probably the duty of this committee was to endeavor to give the right direction to the affairs, on account of differences of opinion; for in 1635, "in consideration of the great trouble and charge of the inhabitants by reason of the frequent meeting of the

* History of Charlestown, 21.

townsmen in general, and that, by reason of many men meeting, things were not so easily brought unto a joint issue," they made a compact, by which it was agreed by the townsmen jointly, "that eleven men, with the advice of pastor and teacher, desired in any case of conscience, shall entreat of all such business as shall concern the townsmen, the choice of officers excepted; and what they or the greater part of them shall conclude, the rest of the town willingly submit to as their own proper act." The eleven persons thus chosen were "to continue in this employment for one year." *

We have here, I think, the origin of the management of the affairs of the towns by "selectmen," originally introduced by the agreement of the townsmen of Charlestown, and afterwards adopted into the laws of the colony.

The selectmen acted as assessors of taxes and overseers of the poor. Other town-officers were elected, some of them the same as those elected at the present day,—town-clerk, constables, surveyors of highways. Overseers of the fields were also elected, part of whose duty was that of the hog-reeve of a subsequent period. But herdsmen and chimney-sweepers are no longer known as town-officers.

In 1636, a schoolmaster was engaged by the town for a twelvemonth,—eleven years prior to the law of Massachusetts compelling towns to maintain schools.† A schoolhouse was built in 1648.‡ There was an organization of the militia also, for there were trainings soon after the settlement.§ I have stated these particulars of what the people of Charlestown agreed and assumed to do, to show what the towns of New England have done, in a greater or less degree, from their earliest existence.

The histories of other towns are not so full and particular. But it appears from the history of Dedham, that the inhabitants

* History of Charlestown, 51.

† History of Charlestown, 97.

‡ History of Charlestown, 99, 65.

§ History of Charlestown, 94.

made a town-covenant, which "laid the foundation for making legitimate by-laws;"—that, having thus acquired the right in their aggregate capacity to make laws, they exercised it for three years; but, as the affairs of the plantation required monthly town-meetings, this diverted them from their necessary business, and in 1639 they delegated all their power to seven men, to be annually chosen."—"These seven men met monthly for many years, made many necessary by-laws for the establishment of highways and fences, for the keeping of cattle and swine and horses; for keeping proper register of land-titles, and of births and marriages; for the support of schools and religion; for additional bounties for killing wolves and wild-cats; for the extinguishment of Indian claims."*

It is but reasonable to suppose, that the other towns which were founded about the same time—Newtown (afterwards Cambridge), Dorchester, Watertown, Boston, &c.—followed the lead of the "great town."

It seems that, in some of the earlier settlements, it was understood that the lands within the towns, the Indian title being extinguished, belonged to those who were authorized to settle them, partly to be divided among themselves, and partly to be granted to those who should join them. In others they were granted by the General Court.†

The first allotments of land, as we have seen, were quite

* Worthington's History of Dedham, 32, 33. — The town regulations extended to all matters of police. — Felt, in his "History of Ipswich," p. 37, refers to an order of May 11, 1644, the first part of which is, "It is ordered that all dogs, for the space of three weeks after the publishing hereof, shall have one leg tied up." The reason of this singular restraint was, that the people had manured their lands with fish, and the dogs, being of opinion that a more satisfactory appropriation might be made of the fish, did not pay due regard to this mode of cultivation. The latter part of the order was, "If a man refuse to tie up his dog's leg, and he be found scraping up fish in the cornfield, the owner shall pay twelve shillings, beside whatever damage the dog doth. But if any fish their house-lots, and receive damage by dogs, the owners of those house-lots shall bear the damage themselves."

† History of Charlestown, 54.

small; and it excites no surprise therefore to learn, that in 1634 "those of Newtown complained of straitness for want of land, especially meadow, and desired leave of the court to look out either for enlargement or removal."* The same was true of settlers in other places; and this led to an extension of the settlements.†

In this respect, as in some others, it was doubtless true, "that the appetite grew by what it fed on;" and that there was, for that reason, a disposition, even when a liberal allowance had been made, to "ask for more."

In a tract entitled "Good News from New England," printed in London, 1648, we find, —

"Most men, unlanded till this time, for large lands eager sue;
Had not restraint knocked off their hands, too big their fermes had grew." ‡

The wholesome restraint, however, which prevented the acquisition of overgrown territory, was continued. Substantial homesteads might be allowed to those who could improve them, and there were a few instances of large grants to some of the principal magistrates.

It is stated that in 1634, when a larger allotment of land was made in Charlestown, the largest share was two hundred and sixty acres, and the smallest ten acres. These grants of land were intended for actual settlers. There was an order in one of the divisions in that town, that, if the lands granted were not occupied, they might be re-granted.

The *straitness* of the men of Newtown for want of land, "especially meadow," it would seem, led to the settlements on the Connecticut, at Hartford and its vicinity.§

The colonial records of Connecticut commenced in 1636; but the original settlement being from Massachusetts, and the

* 1 Winthrop's Hist., Savage's ed., 157.

† Haven's Cent. Discourse, (in Dedham Hist. Coll.), 9.

‡ 1 Coll. Mass. Hist. Soc., 4th Series, 203.

§ 1 Winthrop's Hist., 162, 167; Morton's Memorial, 181.

organization into townships being similar, it is not necessary to dwell upon the history of those settlements. The same may be said of New Haven and Rhode Island.

As the Indian title by occupancy was extinguished, either by purchase or by the extinguishment of the occupants, grants of townships were made by the General Court, from time to time, extending into the interior. These grants were made to numbers of persons, who associated together for the purpose of procuring them; and, unless otherwise expressed, each grantee became the owner of one share in the township. The grantees were called proprietors, or collectively "the proprietary," and had certain rights of a corporate character, suited to the purpose of dividing the lands among themselves; for which purpose they held proprietary meetings, and acted by major vote. The partition of the townships and sales by the owners severally, were better adapted to promote the speedy settlement of the lands than an attempt to sell by the proprietary, as general owner of the whole; for the reason, that this mode furnished the greater stimulus of individual interest in making sales and securing occupation.

The extension of the settlements is beautifully portrayed by Bryant:—

"Look now abroad: another race has filled
These populous borders; wide the wood recedes,
And towns shoot up, and fertile realms are tilled;
The land is full of harvests and green meads;
Streams numberless, that many a fountain feeds,
Shine disembowered, and give to sun and breeze
Their virgin waters; the full region leads
New colonies forth, that, toward the Western seas,
Spread, like a rapid flame, among the autumnal trees."

The early settlements of New Hampshire differed somewhat from those of Massachusetts.

The history of the conflicting grants, which were made from time to time, is foreign to our present purpose, which is with its mode of settlement rather than its title.

Captain John Mason — who, along with Sir Ferdinando Gorges, obtained the grant of all the lands between the rivers Merrimac and Sagadahoc, extending back to the great lakes and the River of Canada — seems to have contemplated, along with a fishing establishment, large agricultural operations, connected with the “great house,” which was probably designed for his own residence. It is said that three or four thousand acres of land were annexed to the house, which was built at Little Harbor, on the Piscataqua River, with the intention of forming a manor there, according to the English custom.

Hilton, another agent, who settled at Dover, had the power of granting lands. But subsequent events show, that here, as well as elsewhere, most of the settlements must have been made without any regular title to the land; and there was, for a long time, no government organized under any charter or commission.

The inhabitants of Portsmouth having, in 1640, entered into a social compact to establish a government among themselves, in the next year the settlements on the Piscataqua River and its branches were formed into distinct governments; so that there were existing, at the commencement of that year, four separate republics, independent of each other; namely, Portsmouth, Kittery, Dover, and Exeter;” * — that is, there were then four towns in that region which had all the powers of government in fact, by agreement, without any legal incorporation. The three former were settled with special reference to their fisheries; the latter, for its salt marshes.

The evils attendant upon such a state of things is readily seen, and the consequence was a union with Massachusetts, which continued until about 1680; these towns, with Haverhill and Salisbury, forming the county of Norfolk. They

* Adams's Annals of Portsmouth, 28.

were represented in the General Court of Massachusetts. I am not aware that Massachusetts assumed the right of granting lands in virtue of the union, which was jurisdictional rather than proprietary.

When the government of the colony of New Hampshire was organized, under the commission of President Cutts, in 1680, only these four towns are mentioned; and, although the settlements must at that time have extended considerably beyond their present limits, the representation in the first assembly was from them only.

But the Massachusetts colony claimed, under their charter, the right to a large tract north of the present northern line of the State; and made grants of townships under that claim, during the union, and afterwards, until the settlement of the boundary.

On the establishment of Mason's claim, townships were granted in a similar mode, by the Masonian proprietors.

The colonial governor, Benning Wentworth, made similar grants, beyond the Masonian curve line, upon certain conditions respecting settlement. These grants were usually to a large number of persons, sometimes with shares for the Church of England and the Society for Propagating the Gospel in Foreign Parts, and a lion's share for His Excellency himself.

The usefulness of these New-England towns is seen, not merely in the ends which were attained directly by their regular action, in the accomplishments of the objects of their organization, through the exercise of their powers and the performance of their duties; but in the facilities which they furnished for rendering aid to other purposes which were not the objects of their organization.

I have already adverted to the fact, that these town-organizations were powerful agents in the preservation of the religious principles of the early settlers.

That there was a difference in the characters and habits of

the people in the different sections of the country, upon the first emigration, we need not be told; and this has been perpetuated to some extent by a difference of social institutions. In other cases, changes of organization have produced corresponding changes in the manifestations of character.

There was no small difference in the habits and manners of the early settlers of New England. A large portion of them was of the Puritan stock; but this, it is well known, was not true of all. Some of the early settlers of New Hampshire were attracted thither, not so much because of the freedom it offered to worship God according to the dictates of their consciences, as that it offered a freedom of valuable fisheries.

It is undoubtedly true, however, that, in the days of the early settlement, and for a long period afterward, the leaven of Puritanism leavened the whole lump. It is equally true, that it exerts its influence for good upon the country at the present day; and we trust it will do so through all coming time.

But had there been nothing in the municipal institutions of New England operating favorably for the preservation of its principles, they could not have continued to exert their full influence after two or three generations.

While, on the one hand, character has its influence in the formation and preservation of the institutions of government, it is also true that the institutions thus formed, in their turn, exert an abiding, almost controlling, influence in the formation of character.

Could the worthy Friends who founded the State of Pennsylvania have bestowed upon the City of Brotherly Love the simplicity of a Quaker town, and could their dress and forms of worship have been continued to it until this day, it would not, a few years since, have been the most noted of all the cities in the Union for the frequency and ferocity of the riots of its fire department.

Had the Puritans left their descendants merely the legacy of their lives of purity and austerity, and of their principles

of honesty and religious faith, without any institutions by which they might be perpetuated, the remembrance of their virtues, the force of their example, and the operation of their principles, would have been much less vivid, much less powerful, and of much shorter duration.

I do not mean to be understood that institutions alone can preserve such principles and virtues, but only that they render a powerful aid in producing that effect. While much that is valuable has been preserved, something of simplicity, at least, has passed away.

The *grants of townships*, which were for the disposition and settlement of the land, became the source of immediate associations of people, — few perhaps at first, — clustering around the central point within the grant, or some favorable spot near the centre, except when they were drawn to a point more remote, by means of the advantages offered by a waterfall, natural meadows, or some other local attraction. The numbers of this small company, thus collected, increased from time to time, until the little settlement rose to the dignity of a New-England village. Here the mechanics established themselves, not always with the best of tools, but sometimes with plenty of shop-room. There is an anecdote of a traveller in Dunstable inquiring for the shop of the blacksmith. "You are in his shop now, but you will find his anvil two miles further on," was the answer. Here was not only the blacksmith, but the carpenter and the shoemaker; and then came the tailor and the trader. The butcher and the baker are of a later date; households, in those early days, acting for themselves in these occupations.

These villages thus formed in the townships, although not walled for defence, furnished a wall of defence against Indian hostility, in the mutual support and aid of the settlers who clustered together, partly for that purpose; and, when upon frontier settlements that was not deemed a sufficient protection against a foe whose approaches were so secret and

whose onset was so deadly, forts were constructed, by the common labors of the inhabitants, for their better security in times of danger.

As the village made progress, lots were selected or drawn, and farms cultivated in other parts of the township; the occupants in general looking to the central settlement as the place for the transaction of their business and for social intercourse. Amid these mutual dangers and hardships, mutual feelings of almost fraternal affection were cultivated.

They divided into school districts, which were compelled to build schoolhouses. Their duty, to provide, in their corporate capacity, for religious instruction, continued for a long period. This, with the provision for schools, transmitted the Puritan character, modified by time and circumstances, but still with many of its distinctive features. There was a change in this particular after the country was settled, so that provision could be made in the several towns for the support of religious worship without the aid of the town authority.

The effect of these rights and duties, thus exercised, upon the religious, moral, social, and political character of the people, has been seen and felt; but the influence of the town incorporation, through which they have been exercised and performed, has been but partially estimated. Through no other agency could such laws have been carried into effect. The want of such agencies was one great reason why in other parts of the country no similar provisions respecting schools and religious institutions existed.

Passing the religious, moral, and social, let us dwell a moment upon the political effects.

It was through these agencies and this organization that the measures of the Mother Country were discussed, when the controversy arose between her and the colonies. And if the merits of this controversy were better understood by the great mass of the people in New England than in any other portion

of the country of similar extent, which I doubt not was the case, it was owing, in no small degree, to these town incorporations: first, in furnishing the education; and, second, in the facilities they afforded for gatherings of the people and the discussion of the subject.

There was no extraordinary effort necessary to secure a meeting, whenever one was desired. The machinery for producing it was all ready. It only required to be put in operation. No stumps were needed on which to utter patriotic harangues. The meeting-houses were well adapted to that purpose. It was thus that great masses of the people were influenced to an active and ardent patriotism.

At the same time the most perfect facilities were furnished for a full knowledge, not only of those who were friendly to the crown, but of the various degrees of their hostility to the popular cause, from that of lukewarmness to that of rabid Toryism.

It was through these organizations that the way was prepared for resistance, not only in sentiment, but in material. Depots of military stores were provided, to a limited extent only; but, so far as such provision was made, it was mostly by the towns.

Great Britain rightly judged that a portion of the country so organized was the most dangerous; and all the events of the time led to the striking of the first blow here.

It was through these organizations that an industrious yeomanry while following the plough, and the diligent tenants of workshops while handling their tools, were converted into an armed soldiery, on the first news that the British had left the limits of Boston and were marching into the country. The dragons' teeth which produced that harvest were sown in the shape of farmers and mechanics, who, holding themselves in readiness, as "minute men," required but the heat of warlike intelligence to burst into full life and vigor as a patriotic army.

But for these towns, New England could not have been prompt to meet the crisis, and to assert the rights of the colonies by an armed resistance which made itself felt and respected from the very moment of the onset. By driving back the enemy discomfited, notwithstanding his partial success, she gave confidence in the result of the war, if war must come.

It was through their organization that law was enforced and order sustained, during the period when war had subverted the administration of justice, which had previously existed, and peace had not arrived to substitute another. The towns organized under their own provisional government, as in the days of the earliest settlement, adopted regulations, and instituted an authority which reduced the refractory to obedience, and prevented the state of anarchy which must otherwise have existed to a greater or less degree.

It was through these towns that the great mass of the people of New England were not only prepared to throw off an allegiance which had become oppressive, but that they had anticipated the action of Congress upon that subject. The several averments or accusations in that bill of indictment, the Declaration of Independence, had been previously asserted and sustained by resolutions, over and over again, in the town-meetings of New England.

It was through these organizations, and not through a want of patriotism elsewhere, that the support of the declaration was more effectual in New England than in any other of the colonies.

That New England, like other communities, has and has had unworthy men within her borders, is doubtless true; that her soil and her resources teach her the salutary lessons of economy, has become proverbial. Founding himself on these facts, her character for patriotism in the war of the Revolution has been recently assailed by an English historian of

some distinction; and it may be proper to add a remark or two upon this subject, although it may lead to a restatement of some of the preceding matter.

Without intending any invidious comparisons, where in general all did well, and the credit of the successful issue is due to all, it is but justice to New England to declare, not only that in no other part of the country of the same extent was she excelled — nay, equalled — in her expenditure of blood and treasure, which has often been said, and always proved when the occasion required proof; but that in no other part of the country could the war have begun with the same preparation on the part of so many of the inhabitants, and under circumstances so well calculated to inspire confidence in the result; and that in no other part could there have been the same efficiency in carrying it on.

If New England had been overcome, the war of the Revolution would have been an unsuccessful rebellion. And it is but a small measure of justice to the towns of New England to say, that this state of preparation, and this efficiency, were owing to their organizations, to the consultation of the inhabitants in town-meetings assembled, and to their powers to provide for the exigency by ammunition, provisions, money, and soldiers, growing out of that organization, as has already been stated.

Stores of that great sinew of war, ammunition, the want of which was such a constant source of complaint, were found nowhere to the same extent as in New England; and much of it was provided by the towns.

Were supplies of provisions to be had at short notice? It was not by foraging among friends as if they were enemies: but the towns were called upon, and the supplies were generally forthcoming; not always, it is true, in the ample manner desired, for there was not always sufficient ability when the will consented.

Was money required to carry on the operation of a cam-

paigned? It was found nowhere so readily as in New England. Were soldiers needed to fill ranks in the army? A requisition was made upon the towns to furnish their quota of troops, and the call was not in vain. Was the pay which was offered inadequate, and men reluctant to assume more than their share of the burden of the contest, to the neglect of their proper business, and the ruin, perhaps, of their families? The inhabitants, in town-meeting called for the purpose, voted increased wages from the treasury of the town, (which, in other words, was by an assessment on themselves,) to make up the deficiency of a depreciated currency. And when, by repeated drafts in this way upon their resources, the general ability was somewhat exhausted, individual inhabitants, excited to action by the enthusiasm of these assemblages, became security for this additional payment, sometimes involving their whole property.

How much of the female fortitude and resolution which so nobly sustained the good cause may be traced to the town organization, or town-meetings, cannot be known. I intend to keep within the limits of fact, instead of entering the region of imagination.

When the Revolutionary contest was over, these organizations existed in the full exercise of their powers, requiring no change to carry the country onward to increased prosperity; and they still remain with undiminished usefulness.